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City Limits WEEKLY

Week of: [April 9, 2007](#)

Number: 582

WINS GALVANIZE WORKERS AT CITY'S ASIAN EATERIES

Victories in court are leading one group of low-wage workers after another to demand rightful pay and conditions. > *By I-Ching Ng*

Many Chinese restaurant workers in New York City are savoring a recent court ruling that found owners of an East Broadway restaurant guilty of paying below the minimum wage and stealing tips. The ruling has triggered a new wave of labor rights activism radiating out from the immigrant enclaves in Chinatown and initiating a new wave of lawsuits targeting hip Asian eateries in Manhattan.

Eleven waiters, captains and busboys of 88 Palace Restaurant, on East Broadway, sued their employers for taking one quarter of their tips and paying below-minimum wages. In *Heng Chan v. Sung Yue Tung Corp. (a/k/a 88 Palace Restaurant)*, U.S. District Court Judge Gerard Lynch ruled on Feb. 1 that the 15 percent “banquet service charge” – an extra gratuity commonly charged in Chinatown restaurants for large parties – is a tip and the employer may not pocket the sum. Lynch’s opinion said the customer often assumed the extra charges were tips for servers. The workers were awarded close to \$700,000 in back compensation.

Lawyers and advocates for the plaintiffs lauded Lynch’s opinion as precedent-setting, since it could impact thousands of tipped workers in service industries nationwide. Many Chinese waiters in New York are now taking their bosses to court, with deliverymen – who have been on the fringes of restaurant labor activism – joining in the latest fight against illegal and unsafe work conditions.

Ray Brescia, associate director of the Urban Justice Center, worked on the 88 Palace case and said, “We feel that this victory will send a message to any restaurant that confiscates its workers’ tips that such practices are against the law. This is a landmark victory because of the amount of the damages and the clear message the judge sent to the restaurant owners.”

A new lawsuit targets Ollie’s Noodle Shop and Grille, a popular chain of Chinese restaurants in Manhattan. Dozens of deliverymen, delivery packers, servers, and busboys from Ollie’s locations at Lincoln Center, Times Square, and West 84th Street sued owners for paying them hourly wages of only \$1.40 – below the legal minimum of \$4.85 for delivery workers (it’s \$4.60 for waiters, who tend to be tipped more) – and other violations. The lawsuit was filed March 29 with the aid of the Urban Justice Center and the Shearman & Sterling law firm.

At a protest outside the Lincoln Center branch the same day, dozens of Ollie’s workers held placards reading “Pay Back Our Sweat-Earned Money” and “End Slave Labor.” Workers recounted the conditions they have worked under. Guiming Li, 33, a deliveryman who worked at the 84th Street Ollie’s for nine years, said he earned \$750 monthly, but after deducting the gas and maintenance expenses for the motor bike he used for deliveries, he brought home only \$250.

April Dong, 27, a server at the Times Square Ollie’s, alleged her bosses forged fake pay records that claimed staff worked 20 hours weekly instead of 65 hours or more.

Waiter Zhenghuo Weng worked in take-out Chinese restaurants in Atlanta before he joined Ollie’s two years ago. He thought a “glitzy” restaurant like Ollie’s would provide better prospects. “I may have been ignorant of the law, but not anymore. If we unite, we will have more bargaining power against greedy bosses,” said Weng, who receives a monthly wage of \$350 before tips and was harassed by his manager.

Tommy Chu, manager of the Ollie’s in Times Square, refused to comment on the allegations, saying only, “Let’s wait for the court to decide whoever is right and whoever is wrong.”

The lawsuit was initiated by the Justice Will Be Served! (JWBS) campaign launched by a coalition including the Chinese Staff & Workers’ Association, the independent 318 Restaurant Workers Union, and National Mobilization Against Sweatshops.

Josephine Lee of JWBS said the organizing and education campaign has been growing in the Chinese community for a decade and was glad it spread beyond Chinatown. “Once it is in their consciousness, they can pressure restaurants to comply with federal and state wage laws,” Lee said.

She said restaurant owners instill tense competition among the workers to drive their wages down – even those with legal immigration status are afraid their jobs will be taken away by the constant supply of cheap labor.

Another high-profile case is Saigon Grill restaurant, where 36 delivery workers filed a lawsuit March 21 for wage violations, with the counsel of Asian American Legal Defense & Education Fund (AALDEF). The group said three locations of the popular Vietnamese eatery – on the Upper East Side, the Upper West Side and Union Square – generate more than \$2 million in sales monthly, but the delivery workers were paid as little as \$1.60 per hour.

Labor violations in Asian restaurants have been such a widespread practice that many workers felt switching jobs would not help. "I talked to many deliverymen on the streets and realized that their bosses are as bad as mine. So, what's the point of leaving?" said deliveryman Yugang Ke, who worked for Saigon Grill for more than 10 years, and earned only \$400 a month for his 66-hour work week. Unaware of labor regulations and unable to speak English, Ke discovered the minimum wage requirement recently from reading Chinese-language community newspapers, which publicized the victory of the 88 Palace workers. "We are exploited for far too long and they encouraged us to fight against injustice," Ke recalled in Mandarin.

Saigon Grill workers said they were denied meal breaks and subjected to fines of \$200 for customer complaints, \$50 for slamming doors and \$25 for forgetting to pick up the order slip from the register. Deliverymen said their boss denied their requests to wait outside high-crime buildings, to avoid being robbed or attacked.

When the workers tried to unionize in early March, their boss tried to get them to sign new contracts offering new full-day wages of \$35 for 12 hours or \$25 for a half day. The workers refused the offer and the restaurant owner shut down the delivery department.

In a statement issued by Saigon Grill, owner Simon Nget said the daily pickets "frighten the customers" and are "illegal and not right." He added: "I have always paid my delivery men what is required by law, paid their taxes and paid their benefits. They have no legitimate complaint." A flyer signed by dozens of waiters and staff working inside the restaurant said the owners treat them "good" and accused the demonstrators of "chasing away customers."

During the three and a half years of bitter litigation, 88 Palace was sold and reopened as East Market Restaurant in January. The new owners made public pledges to abide by the law and rehired many fired staff with legal immigration status. Zheng Dalong, one of the new restaurateurs, said other Chinese restaurant owners were flabbergasted to see them righting the wrong. He suspects that, in retaliation, some restaurant owners claimed his eatery hired undocumented immigrants, prompting the state Department of Labor to launch a surprise inspection on Feb. 10.

Many Chinatown restaurants have changed their practices following the 88 Palace ruling. But workers at Chinatown's largest restaurant, Jing Fong at 20 Elizabeth Street, are now protesting, alleging their boss Shui-ling Lam pockets 35 percent of waiters' banquet tips. AALDEF plans to file a new lawsuit on behalf of 28 workers, in addition to an unresolved 2006 lawsuit against the restaurant. In 1997, the state won \$1.1 million in back wages and stolen tips for Jing Fong workers. Despite the ruling, the workers claimed their boss started using the new "service charge" to retain workers' tips and later increased his share of the tips from 21 percent to 35 percent.

Steven Wong, founder of Chinese Restaurant Anti-Violence Society, said, "The lawsuits warn Chinese restaurant owners that they can no longer say, 'this is the Chinese culture' to justify their long-term illegal practices."

Wing Lam of the Chinese Staff & Workers' Association said labor violations are still rampant in many Chinese restaurants in Queens and Brooklyn and they will mobilize more disadvantaged workers to end the so-called "slave labor."

Ken Kimmerling, legal director of AALDEF, said the lawsuits highlighted an overlooked problem – even upscale restaurants in fashionable neighborhoods are abusing their workers. "It's only the beginning, we will file three more claims very soon," he said.

Attorney Daniel A. Hochheiser has filed an appeal on behalf of the 88 Palace owners. "It was a technical ruling that is a legal anomaly triggered by the court's classification of a portion of the 15 percent banquet fee as tips instead of service charge," Hochheiser said. "This one classification by the court triggered a series of legal consequences which provide a windfall to the plaintiffs who received total compensation in excess of the minimum wage."

Rachel B. Passaretti, an attorney at Skadden, Arps, Slate, Meagher & Flom, who worked on the 88 Palace case pro bono, refuted that, saying, "It doesn't matter how employers label things – whether as 'service charge' or something else, the importance lies in the customer's perception of the fees. If it truly is a service charge, it should be reported for accounting purposes."

[- I-Ching Ng](#)